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No. 91-927

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

MICHAEL SU TE-CHIA,
Petitioner,
vs.
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES,
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the trial court violate the defendant's Sixth and Fourteenth Amendment right to present evidence in his behalf by excluding from evidence former co-defendant Wang's declarations against his penal interest knowing that Wang was unavailable to testify?

2. Did the trial court, over defense objections, properly admit four statements by Defendant Chia during a six-day period of incommunicado incarceration prior to his arraignment?

3. Did the trial court violate the principles enunciated in Mullaney v. Wilbur, 421 U.S. 682, 702, 95 S.Ct. 1881 (1975), by failing to instruct the jury on lesser included offenses of second degree murder and involuntary manslaughter?

4. Did the trial court sentences constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution and violate the Due Process Clause of the Fourteenth Amendment in view of the fact that those sentences were predicated on impermissible factors in sentencing the accused, namely the victim's father's importunings for the most severe punishment?

PARTIES TO THE PROCEEDING

The parties to this proceeding are the Petitioner, and the Respondent, State of California, represented by the Attorney General.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Michael Su Te-Chia, the petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the California Supreme Court denying a Petition for Review and affirming the judgments of conviction entered on September 4, 1991.

REPORTS OF OPINIONS BELOW

The opinion of the Court of Appeals delivered below was unpublished and is attached herein as Appendix A. A Petition for Rehearing was denied and is attached herein as Appendix B. A Petition for Review in the California Supreme Court was denied and is attached herein as Appendix C.

JURISDICTION

The California Supreme Court, that State's highest tribunal authorized to review the instant case, denied a Petition for Review on September 4, 1991 (see Appendix C). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves an analysis of the Sixth, Eighth and Fourteenth Amendments to the United States Constitution, which are spelled out in Appendix D.

STATEMENT OF THE CASE

On February 5, 1988, Drug Enforcement Administration (DEA) Special Agents, Paul Seema, George Montoya, and Jose Martinez, posing as large drug traffickers, were shot in the City of Pasadena after turning over $80,000 in cash for the supposed purchase of narcotics. Agents Seema and Montoya were killed, but Agent Martinez survived. The killers were Frank Kow and former co-defendant, William Wang, who was tried separately and subsequently received a sentence of life imprisonment without possibility of parole, even though the death penalty was sought (Companion case of People v. Wang, B049641). Also

present at the crime scene in a backup car was Mike Sun. In the ensuing police chase, Kow and Sun were killed by DEA agents, and Wang was shot nine times, but nevertheless survived. Petitioner/Defendant Michael Chia, who had never been closer than six miles to the scene of the killing, was arrested in Monterey Park at approximately 12:30 p.m., while enroute to the Pasadena Courthouse to pay for two traffic tickets garnered by his friend Linda Chen while driving his black Mitsubishi automobile on previous occasions.

On that same date, February 5, 1988, the facts concerning the multiple homicides were presented to Assistant United States Attorney Jim Walsh for prosecution under Title 18, U.S.C., §§ 1111, 1114, 2114, and 2(a). Six days passed, or until February 11, 1988, with Defendant Chia being held incommunicado in several different jails, unable to speak with his family or an attorney. On February 9, 1988, a Complaint was filed in the Federal District Court for the Central District of California, in Los Angeles, before United States Magistrate Kronenberg, charging William Wang with various acts of assault and murder. Finally, on February 11, 1988, a Complaint was filed in the same Federal District Court, before United States Magistrate Stone, charging Appellant Michael Chia in four counts: In Count One, he was accused of violating 18 U.S.C. §§ 1111, 1114, and 2(a), for the assault and murder of Special Agent Paul Seema. In Count Two, he was accused of violating 18 U.S.C. §§ 1111, 1114, and 2(a), by assaulting and murdering Special Agent George Montoya. In Count Three, he was charged with violating 18 U.S.C. §§ 1111, 1114, and 2(a), for an assault on Special Agent Jose Martinez. In Court Four, he was charged with a violation of 18 U.S.C. § 2114 and 2(a) for the theft of money belonging to the United States Government and taken from Special Agents Seema, Montoya, and Martinez. On that date, February 11, 1988, he was hailed before Magistrate Stone and ordered detained without bail.

A preliminary hearing for subjects Wang and Chia was scheduled for February 26, 1988; however, the matter was presented to a Federal Grand Jury on February 24, 1988, seeking an indictment for the above-mentioned charges. The

Grand Jury did indeed indict both of them on the charges requested and heard testimony from numerous witnesses. The case remained exclusively a federal one until the United States Attorney sought and obtained a dismissal of all charges as to both defendants so that the State of California could seek the death penalty against William Wang. Both Wang and Chia remained in custody and were turned over to the District Attorney's Office for the County of Los Angeles for prosecution on State criminal charges. The cases were initially joined, but then severed in the Municipal Court for the Pasadena Judicial District. Defendant Chia's preliminary hearing commenced on April 11, 1988. He was charged in Count One with a violation of California Penal Code § 187(a), alleging the murder of Agent Seema; in Count Two with a violation of the same section, accusing him of the murder of Agent Montoya; and in Count Three with a violation of California Penal Code §§ 664/187(a), namely an attempt to murder Agent Martinez; and lastly, in Count Four with a charge of robbery, a violation of Section 211 of the California Penal Code. He was held to answer on all charges.

On May 10, 1988, an Information was filed against Defendant Chia in the Superior Court in Pasadena, alleging five counts as follows: Count One accused him of violating Section 187(a) of the California Penal Code by murdering Agent Seema. It was further alleged that the offense was a serious felony within the meaning of California Penal Code § 1192.7(c)(1). It was further alleged that a principal in said offense was armed with a firearm within the meaning of California Penal Code § 12022(a). In Count Two, the same charges were alleged with the victim being DEA Agent Montoya. In Count Three, Chia was accused of the attempted murder of DEA Agent Martinez, in violation of California Penal Code §§ 664/187(a), with the further allegation that the offense was a serious felony within the meaning of California Penal Code § 1192.7(c)(1). In Count Four, Defendant Chia was accused of second degree robbery of DEA Agents Seema, Montoya, and Martinez, and that the offense constituted a serious felony within the meaning of California Penal Code § 1192.7(c)(1). It was further alleged that a

principal in the robbery was armed with a firearm, to wit, a revolver, within the meaning of California Penal Code § 12022(a). Additionally, Chia was accused of taking property of the United States Government in excess of $25,000 within the meaning of California Penal Code § 12022.6(a). Lastly, Defendant Chia was accused of conspiring with William Wang, Frank Kow, and Mike Sun to commit the crime of robbery, in violation of Section 211 of the California Penal Code, and alleged a series of overt acts supportive of the conspiracy. Defendant Chia was arraigned on the above charges, pleading not guilty to each of them.

The trial commenced with the selection of the jury on September 29, 1988, and culminated in findings of guilt as to all charges on November 1, 1988. On February 28, 1989, motions for new trial were denied, arguments as to the appropriate sentences were heard, and judgments were pronounced. In Count One, Defendant Chia was sentenced to be imprisoned from 25 years to life, received the same sentence on Count Two, to run consecutively, additionally received a sentence of nine years, the high term, for the attempted murder in Count Three to run consecutively, plus additional one year terms under California Penal Code § 12022(a) as to Counts One and Two. As to Count Four, the robbery, Chia was sentenced to the high term of five years, plus one year on the armed allegation, pursuant to Section 12022(a). On Count Five, the conspiracy, he was sentenced to the high term of five years. Counts Four and Five were stayed pending the completion of the base term due to the mandates of California Penal Code § 654. The defendant was remanded to custody, a status he had enjoyed since his arrest on February 5, 1988. A Notice of Appeal and Designation of Record on Appeal were timely filed on April 28, 1989. On May 30, 1991, the Court of Appeal affirmed the Judgment on all counts (Appendix "A"). A timely filed Petition for Rehearing was denied on June 19, 1991 (Appendix "B"). A timely Petition for Review was filed in the California Supreme Court, the court of highest jurisdiction in California, and the petition was denied on September 4, 1991 (Appendix "C"). The matter is now before this Court.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for the following reasons:

I

FORMER CO-DEFENDANT, WILLIAM WANG, MADE FOUR DECLARATIONS AGAINST HIS PENAL INTEREST, ALL OF WHICH SHOULD HAVE BEEN DEEMED ADMISSIBLE ON BEHALF OF DEFENDANT CHIA UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AS WELL AS CALIFORNIA EVIDENCE CODE § 1230, AND NONE OF WHICH WAS IN FACT ADMITTED, RESULTING IN DEFENDANT CHIA'S CONVICTION ON ALL CHARGES.

Prior to trial, the defense moved to admit four Declarations of former co-defendant William Wang, whose trial was severed from that of Defendant Chia, and scheduled to commence after the completion of Chia's case. He asserted his intention to take the Fifth Amendment in Chia's trial, resulting in his unavailability as a witness on behalf of Michael Chia (RT 39-67), a fact acknowledged by the Court of Appeal (A-8, fn. 3).

In the escape attempt by accomplices, Kow, Sun (erroneously referred to as Chen throughout the Court of Appeal Opinion), and Wang, William Wang was shot nine times with police weapons, resulting in his lengthy hospitalization and bare survival. While at the hospital, Wang made four separate statements to the police-all of which comprehensively implicated himself to the hilt, and made no attempt to shift the blame for the homicide incident to other persons living or dead, although Wang easily could have done so. After all, his two confederates were dead and not in a position to contradict him. The Court of Appeal capsulized Wang's declarations (A-6, 7, fn. 2). They are essentially accurate renditions, although they do not begin to describe the extent to which Wang incriminated himself. For example, Wang candidly described the meeting between conspirators Kow, Sun, and Wang at Kow's house earlier in the

day and that he understood in advance that it was to be a "rip-off." (CT 706) He admitted that he remembered one of the occupants of the Volvo say, "Please don't kill us." (CT 710) He further admitted he "shot 'the Oriental' 3 times with a revolver." (CT 699-700) He stated that he shot the person seated in the right front passenger seat after pointing the weapon right at his chest. When the driver of the Volvo attempted to escape, Wang shot him also. (CT 701-04) Wang also acknowledged that he provided both guns for the robbery, one of which was a .45-caliber pistol. (CT 699-700) He stated that he did not know of anybody else involved in the actual shooting other than himself, Mike Sun, and Frank Kow. (Ibid.) Further, increasing the likelihood that he could be charged with and receive the death penalty, he provided the damaging admission that defendant Chia had repeatedly tried to persuade Wang not to go ahead with the scheme, but that Wang ignored his advice and proceeded full speed ahead. (CT 707, 709) (See People v. Garcia, 115 Cal.App.3d 85, at pg. 105 (1981). He stated that Chia, when he showed up at Tiny Naylor's Restaurant, "was watching out for him, and again told Wang not to do it. Wang told Chia to go home, but he stayed to watch out for Wang." (A-6, 7, fn. 2)

Wang's declarations clearly should have been admitted under Section 1230 of the California Evidence Code as declarations against penal interest. Let us examine Section 1230:

> "**§ 1230. Declarations against interest**. Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim by him against another, or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed

it to be true. (Stats.1965, c. 299, § 1230.)" California Evidence Code, Section 1230.

It is patently obvious that Wang's explicit confessions to armed robbery and murder exposed him to "criminal liability," as well as created "a risk of making him an object of hatred, ridicule, or social disgrace in the community," such that no reasonable man in his position would have made these statements unless he believed them to be true.

Totally aside from California law, the refusal to allow defendant Chia to defend himself by the only means left available to him by the prosecutor was a violation of his right to produce evidence in his own behalf under the Sixth and Fourteenth Amendments to the United States Constitution. Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920 (1967).

Clearly, the right to subpoena witnesses in your own behalf encompasses the right to have them testify in fact! And it was that fundamental right which was effectively thwarted in the instant case. Here, the United States Attorney's Office, in conjunction with the spokesman for the State of California, the Los Angeles District Attorney's Office, elected to sever and try the cases of Chia and Wang in a sequence which guaranteed that its dead bang case against Wang would be tried after that of the marginally involved co-defendant Chia. Naturally, when Chia summoned Wang to testify consistent with his freely given multiple confessions exonerating Chia, Wang's attorney invoked the Fifth Amendment. Of course, it was understandable that since Wang was waiting on deck to stand trial for his life that his attorney elected to await that trial before having him subjected to scorching cross-examination concerning his misdeeds until the prosecution presented its case at the scheduled subsequent trial.

The tragedy which infests this case, however, is that the prosecutors, knowing that Wang possessed information which would have exonerated Chia, delayed his trial in such a way as to de facto prevent Chia from having the benefit of Wang's in-court testimony in his own defense. Moreover, when Chia's defense attorney resorted to the only means available to him to adduce Wang's testimony, the prosecution objected to it, although it knew full well that it was truthful and relevant to the

defense of Chia; moreover, it thought so much of the testimony that it sought and obtained its admission in the subsequent trial against Wang which it knew full well would be concluded only after Chia had an opportunity to complain of this grie. ous crime (companion case of People v. Wang, B049641).

Crucially, the first degree murder convictions which, as a practical matter, condemn Michael Chia to a life behind prison walls, were predicated upon the application of the felony murder rule which made it imperative for the jury to have at its disposal all of the relevant evidence it could obtain to determine whether Chia was guilty of the underlying robbery. Similarly, since the case was simultaneously tried on a conspiracy theory, which was even formally alleged in Count Five, it was essential that the jury have the fullest access to evidence concerning Defendant Chia's involvement in the events leading up to the unquestioned tragedy.

And bear in mind that Defendant Chia was held incommunicado, without access to an attorney, family, or friends from the point of his arrest on February 5, 1988, until the point of his arraignment in Federal Court on February 11, 1988. He and William Wang were totally unable to communicate with each other and fabricate anything, even if they were disposed to do so.

Wang provided a copious accounting of the brutal murders he committed, and in no way attempted to deflect guilt from himself. In fact, his statement that Defendant Chia tried to talk Wang out of going through with the "rip-off" and was present at Tiny Naylor's Restaurant only for the purpose of protecting Wang, made Wang's crime all the more callous. Given the fact that Chia's case was dismissed in Federal Court only so that he could be dragged into State Court and tried with co-defendant Wang so that the prosecution could seek the death penalty against Wang (A-12, fn. 5), it is manifest that Wang's acknowledgement that Wang committed these heinous crimes, despite Chia's repeated importunings not to do so, constituted a declaration decisively against Wang's penal interest and of obvious relevancy in the death penalty phase of the proceedings against him.

So, although the prosecutor argued that statements which tended to put Chia in a better light were not declarations against penal interest and were inadmissible, the statements and the circumstances attending them, made Wang's crimes all the more despicable and the fact that the declarations simultaneously provided truthful evidence, either exonerating Chia or diminishing his role in the enterprise, is no reason for excluding the statements. In reality, what the prosecution argued for and got was a flyspecking approach to Wang's comprehensive acknowledgements of culpability, geared not to admitting trustworthy statements against Wang's interest, but to excluding them if they also offered truthful evidence helpful to Chia's defense.

A sad commentary on the centuries' long exception to the hearsay rule permitting declarations against interest is that California has furnished some of the leading examples of the application of that doctrine. People v. Spriggs, 60 Cal.2d 868 at 875, fn. 36, Cal.Rptr. 841 (1964); (See also People v. Lopez, 110 Cal.App.3d 1010, 1021, 168 Cal. Rptr. 378 (1980); People v. Smith, 13 Cal.App.3d 897, 902, 91 Cal.Rptr. 786; In Re Jessie L., 131 Cal.App.3d 202, 182 Cal.Rptr. 396 (1982); and People v. Leach, 110 Cal.App.3d 1010 (1980); People v. Garcia, 115 Cal.App.3d 85, 105 (1981).)

The fact that Wang's declaration against his penal interest was simultaneously favorable to defendant Chia in no way makes it any less a declaration against Wang's penal interest. As Professor Wigmore put it:

> "All parts of the speech or entry may be admitted which appear to have been made while the declarant was in the trustworthy condition of mind which permitted him to state what was against his interest." (5 Wigmore, Evidence (Chadbourne, rev. 1974) § 1465, pg. 341; see also Model Code of Evidence, Rule 509(2), pg. 255.)

The Court of Appeal suggested in its Opinion (A-9) that because Wang's statements were post arrest, they were inherently suspect. However, that proposition applies only when a declarant after his arrest seeks to shift the blame to someone

else in order to benefit himself. People v. Leach, 15 Cal.3d 419, 438-42 (1975); People v. Shipe, 49 Cal.App.3d 343, 352-54 (1975); People v. Campa, 36 Cal.3d 870, 882-3 (1984). Post arrest confessions and admissions are deemed reliable and introduced into evidence everyday against the maker of the statements, and they are no less reliable if introduced for or against another defendant.

The reason courts are so chary about permitting out-of-court admissions or confessions by one party, who is not on trial, against another party who is on trial, is that the court must be protective of a defendant's right to confront and cross-examine his accusers as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. Here, Chia was denied the right to produce evidence in his own behalf. Of course, the reason that the defense offered Wang's declarations against Wang's penal interest on behalf of Defendant Chia was because they constituted relevant and favorable evidence.

The Court of Appeal has essentially held that it is virtually impossible for a defendant to introduce another person's declarations against his penal interest by holding them inadmissible if they simultaneously prove helpful to the accused. This is absolute nonsense! Although the Court of Appeal suggested in its Opinion (A-9) that there was no corroboration for Wang's statements (which is not even a requirement for admissibility), there was in fact considerable corroboration. As the Court recognized in its Opinion, Chia, at a time when he was totally isolated not only from Wang, but from his attorney and family, described how he "cautioned Wang against the entire enterprise" (A-11, fn. 4).

The Court of Appeal's conclusion that Wang's statements would not have been particularly helpful to Chia substituted that Court's view of the evidence for a view the jury was never given an opportunity to embrace. The jury well could have concluded, if it had the benefit of Wang's declarations, that Chia's persistence in trying to persuade Wang to disavow the criminal enterprise and his physical presence at Tiny Naylor's in order to safeguard Wang against harm from his confederates, did not make him a conspirator in the subsequent armed robbery.

The failure of the trial court to admit William Wang's declarations against penal interest resulted in lifting the prosecution's fragile case over the hump and led to the conviction of Defendant Chia. Accordingly, this case should be reversed and remanded for a new trial where former co-defendant Wang can testify and the jury can render an appropriate verdict.

II

THE MOTION TO SUPPRESS THE FOUR STATEMENTS MADE BY DEFENDANT CHIA DURING HIS SIX-DAY INCARCERATION, WITHOUT ACCESS TO COUNSEL, FAMILY OR FRIENDS, NOR THE ARRAIGNMENT COURT, SHOULD HAVE BEEN GRANTED.

Prior to his arraignment, Chia gave four statements to law enforcement officials. He moved to suppress these statements for lack of voluntariness and due to the fact that they were obtained during his illegal detention. (CT pgs. 556-748; RT pgs. 69-439.) These four statements are condensed in the Court of Appeal Opinion (A-10, 11, fn. 4). That recitation follows:

> "In his first statement, Chia explained his activities that day as getting up, going to a county agency, getting something to eat and taking friends to court in Pasadena to pay tickets. When told he had been seen at Tiny Naylor's, Chia explained that he had called his friends from there.
>
> In his second statement, Chia said Wang told him about a plan to "rip off" some drug dealers, that he had taken Wang to a dealer's apartment the night of February 4 to deliver a .45 and bullets, and that he told Wang that he was concerned about Wang's safety and would follow him on February 5 and pick him up if there was trouble. On February 5, Chia drove Wang to the dealer's apartment, got something to eat, waited at the restaurant parking lot but never saw Wang, and left to take his friends to court. Chia said the ski masks found in his trunk were for "playing

jokes" on friends and identified the magazine clip in his trunk as Wang's.

In his third interview, Chia told again of taking Wang to deliver the gun on the evening of February 4. He said that he and Wang made the plan for Chia to be Wang's bodyguard during the robbery on the ride home from the 8000 Club that same night. He cautioned Wang against the entire enterprise, and told agents that he hadn't believed it would happen. He again described his activities on February 5, and said Wang had given him the ski masks.

In Chia's fourth statement, he said that he saw Wang and Chen (sic) coming out of the restaurant when he went there at 11:00 a.m. on February 5, that Wang told him he was not to be seen, that he went into the restaurant to make a phone call, and then drove to his friend's house."

PRELIMINARY STATEMENT

The facts surrounding Defendant Chia's motion to suppress are as follows: Chia was arrested at approximately 12:30 or 12:45 p.m. on Friday, February 5, 1988. (RT 82, 201-02.) The arresting posse consisted of 10 to 15 police or sheriff's cars manned by armed officers. (RT 81.) He was ordered out of his car, handcuffed and searched. (RT 253.) He was very scared. (RT 202.) He was then held at the Monterey Park Police Department and placed in isolation in a cell for approximately four to five hours. He had neither food nor drink. (RT 206, 209.)

Chia was then taken to the Pasadena Police Department. (RT 209, 281.) He was not told of the charges against him. (RT 286.) He was subjected to numerous interrogations by officers of the Pasadena Police Department and the FBI. (RT 337-38.) He was never told that he was a suspect in a murder investigation. Instead, he was led to believe that he was being kept in custody simply because he was a friend of William Wang. In an interview which took place after Chia was hauled out of his cell

at 3:20 a.m. on February 6, Officers Gallon and Salgado played for him a portion of a taped interview with his friend William Wang. On the tape Wang referred to Michael Chia as his friend and that Chia told Wang not to go through with the ripoff. (RT 354-55.) Salgado and Gallon used the tape as "leverage" to "convince" Chia that he could help his friend William Wang. (Ibid.) In between interrogations, Chia was kept in an isolation cell, with no windows or light. (RT 212, 351.) Although Chia was told that he had the right to a public defender if he could not afford a lawyer, he thought he might not "qualify for a public defender" because his parents had money, but they were in Taiwan. (RT 213.) He was held incommunicado and was not even allowed to speak with his brother or his lawyer. (RT 375-76.) At Chia's third interrogation, Chia testified that he was told that he would be released when the interrogation was concluded. In this connection, one of the officers brought a bag into the interrogation room which he stated contained Chia's clothes. (RT 217.)

The Chief United States Attorney in charge of the case, James Walsh, testified that he had the Immigration and Naturalization Service place a hold on defendant Chia so that he could not get out of jail. "Immigration seemed like one of the best ways of doing it." (emphasis added) (RT 330-31.) The charge which the INS used to keep Chia in custody to prevent his arraignment and to permit his continued interrogation was not possessing his green card on his person, although he had one. It was conceded that such violations are not prosecuted. (RT 293-94, 299, 301, 308, 310.)

Chia was not arraigned until Thursday, February 11, 1988, six days after he was arrested. (RT 324.) Shortly before the arraignment, he was afforded a court-appointed attorney from whom he learned for the first time that he was not required to talk to the investigators. (RT 221.) After Chia had been appointed an attorney, Agent Page of the FBI visited him and, in the absence of his attorney, told Chia that if he did not talk he would have to go to jail for 10 or 20 years. (RT 221-22.)

The case against Defendant Chia was a thin case at the time of his arrest. In essence, there was evidence that he was a friend

of William Wang and that Chia had dropped off Wang at Frank Kow's apartment the night before the murders and had dropped him off at Kow's on the morning of the murders. Kow was one of the murderers. There was also evidence that at about 11:30 on the morning of the murders Chia had driven to the parking lot of Tiny Naylor's Restaurant and had possibly spoken with Wang and Kow. Kow later met with the victims of the murder, DEA undercover agents in Tiny Naylor's, and then drove with the agents to the place where Kow and Wang murdered the agents, thinking they were dope dealers. Chia was not present at the murders and did not accompany the murderers as they went from Monterey Park to Pasadena where the murders took place.

Mr. Chia was born in Taiwan. He was only 20 years of age when the crime was committed. He came to the United States eight years before, was not fluent in English, and needed the assistance of an interpreter. (RT 201, 226-29.)

Inasmuch as the shooting victims were DEA agents, this case was originally prosecuted as a federal case pursuant to an agreement between local and federal authorities. A federal complaint was filed on February 11 and on February 24, 1988, the federal indictment issued. (RT 324.)

Subsequently, the indictment was dismissed on March 15, and the prosecuting authorities decided to pursue these offenses in the state court system because the California state law allowed for the death penalty (and the federal law did not), and the prosecution wanted to seek the death penalty in the case of William Wang, which was originally joined with Chia's, although after the cases were removed from Federal Court to State Court they were severed. (RT 324-325.)

After the state filed formal charges, Chia was then retransferred to state custody so that the prosecution could benefit from a violation of federal law, having already used the federal law as a sham basis for violating California law. And, alas, the United States Attorney's Office then joined the Los Angeles District Attorney's Office in the state court prosecution, with the joint prosecution team maintaining that when federal law was violated, state law should apply; and when state law was violated, federal law should apply.

This "shell game" technique permitted the fruits of both an illegal detention and coercion to be used as evidence to convict the defendant.

A. Federal Law Applies to the Issue of Suppression of Defendant Chia's Statements.

Federal law should apply to the pre-trial procedures in this case as it was investigated and filed as a federal case and dismissed and refiled as a State case so as to allow defiance of Federal law and to permit the joint prosecutorial tandem comprised of the Assistant United States Attorney and the Deputy District Attorney to seek the dealth penalty against the co-defendant Wang, occurrences which defendant Chia could neither avoid nor prevent.

The undercover investigation leading to the deaths of the DEA agents was a federal investigation. The investigation conducted after the murders was so much of a federal investigation that the numerous DEA investigative agents all refused to even be interviewed by state police officials. The FBI, alone, conducted the interviews. It was agreed by the state and federal authorities that the case would be prosecuted federally and a federal complaint and indictment were filed. (RT 324.) More than a month later, for tactical reasons, the federal case was dismissed and state charges were filed against Michael Chia and William Wang. The acknowledged tactical reason was to seek the death penalty against Wang, and Chia was just "dragged [it] along." (RT 324-25, 334.) An unstated, but obvious reason, was to jettison the cargo of mammoth violations of federal law which would have resulted in the exclusion of Chia's statements extracted from him during his six consecutive days of isolated custody. (See Rule 5 of the Federal Rules of Criminal Procedure.)

Assuming concurrent state and federal jurisdiction over a particular crime, prosecuting authorities are generally permitted to shop for the more favorable jurisdiction in which to institute a prosecution. However, there are limits to this conduct. Moving a federal case into state court merely to end-run a

violation of federal law cannot excuse the violation of federal law. To hold otherwise would be to invite state and federal agents to aid each other in circumventing rules they find inconvenient or troublesome. Today, the rule the prosecuting authorities seek to evade is a federal rule; tomorrow, however, the prosecuting authorities may seek a tactical retreat from state court into federal court in an attempt to insulate state agents from the California rule of criminal law. Such manipulation of the two systems would breed cynicism and disrespect for the law. (See Anderson v. United States, 318 U.S. 350, 63 S.Ct. 599 (1943). (See also United States v. Broadhead, 413 F.2d 1351 (7th Cir. 1969); United States v. Fouche, 776 F.2d 1398 (9th Cir. 1985); State of West Virginia v. Guthrie, 315 S.E.2d 397 (S.Ct.Apps. W.Va. 1984).

In substance, the rule of law that has developed in cases where there are cooperating jurisdictions processing one criminal investigation or prosecution is that the defendant is entitled to the fullest protection available under either jurisdiction and may not be denied that protection merely by the transfer of the case from one jurisdiction to the other. If the prosecutor can choose jurisdictions, and the defense cannot, this Court should at least require that the laws of the jurisdiction which the prosecutor seeks to circumvent be obeyed. If not, this Court promotes prosecutorial gamesmanship, forum shopping, and disrespect for comity. When the rule is applied to this case, it requires that Chia be afforded all the rights he would have under Federal Rule 5.

B. A Delayed Arraignment In Excess Of Six Hours May Itself Render a Confession Inadmissible; In The Case At Bar, The Defendant Was Not Arraigned Until Six Days After His Arrest. Furthermore, The Length and Nature Of His Custody Invalidated Any Claimed Waiver Of His Miranda Rights.

Under the terms of Rule 5, Federal Rules of Criminal Procedure, an officer who makes an arrest, with or without a warrant:

> "shall take the arrested person without unnecessary delay before the nearest available federal magistrate or, in the event that a federal magistrate is not reasonably available, before its state or local judicial officer authorized by 18 U.S.C. § 3041 . . .." (emphasis added).

Under 18 U.S.C. § 3501(c), six hours is the maximum time which a defendant may be held without arraignment; and a trial judge may exclude a confession solely because of a delay in arraignment exceeding the six hour deadline. Indeed, the Ninth Circuit recently held that unreasonable delay in arraignment is the single most important factor for a court to consider in determining whether to exclude a confession as coerced. United States v. Wilson, 838 F.2d 1051, 1086 (9th Cir. 1988). And the Second Circuit has gone even further. In United States v. Perez, 733 F.2d 1026 (1984), the Court of Appeals suppressed a voluntary confession taken from the defendant more than six hours after his arrest on the ground that such "delay may serve as a basis for separate, independent exclusionary remedy." [Id. at 1031.]

The Court of Appeal concluded that the untimeliness of the State arraignment was mooted by the INS hold placed on Chia (A-11). However, the Chief United States Attorney testified that was merely a gimmick to keep Chia in custody and that the failure of a resident alien to have his green card in his possession would not be prosecuted. (RT 293-4, 299, 301, 308, 310, 330-31).

In the present case, the pre-arraignment delay is by itself sufficient to render Chia's inculpatory statements inadmissible. (cf. United States v. Wilson, supra.) Moreover, the facts demonstrate that the delay in this case was so extravagant as to indubitably require the suppression all of the statements made by Defendant Chia. Clearly, the delay was inexcusable, since the police faced no difficulty in transporting Chia to a federal magistrate. Chia was arrested in Monterey Park at about 12:30 or 12:45 p.m. on a Friday. He was taken to the Monterey Park Police Department which is 15 minutes from the Federal Courthouse in downtown Los Angeles. He was later taken for further

questioning to the Pasadena Police Department, which is also only 15 minutes from the downtown Los Angeles Federal Court. (See also United States v. Perez, 733 F.2d 1026 (2nd Cir. 1984).

C. The Statements Extracted from Defendant Chia Were The Products Of Psychological Coercion By The Interrogating Officers and, As Such, Inadmissible.

Even apart from the extravagant violation of Rule 5 in this case, the circumstances under which Chia's statements were obtained show that they were the product of psychological coercion.

In Blackburn v. Alabama, 361 U.S. 199, 80 S.Ct. 274 (1960), this Court "recognized that coercion can be mental as well as physical." [Id. at 206.] In that regard, the Blackburn Court noted:

> "[T]he blood of the accused is not the only hallmark of an unconstitutional inquisition. A number of cases have demonstrated, if demonstration were needed, that the efficiency of the rack and the thumb screw can be matched, given the proper subject by more sophisticated modes of 'persuasion'." [Id. at 206.] See also United States v. Tingle, 658 F.2d 1332 (9th Cir. 1981).

Interrogations which were conducted at times and under conditions which allowed the police to play on the defendant's fatigue have been held involuntary. In Spano v. New York, 360 U.S. 315 (1959), for example, this Court noted:

> "Nor was the questioning conducted during normal business hours, but began in early evening, continued into the night, and did not bear fruition until the not-to-early morning. The drama was not played out, with the final admissions obtained, until almost sunrise. In such circumstances slowly mounting fatigue does, and is calculated to, play a part..." (emphasis added) [Id.]

While Chia was not questioned by "a skillful prosecutor," as was the defendant in Spano, he was questioned by practiced

police and FBI interrogators. Nor, as in Spano, "was the questioning conducted during normal business hours." Chia was first interviewed at 7:40 in the evening, then taken back to his cell, then awakened at 3:20 a.m. for further questioning. At the time of the first interview, it had been almost seven hours since his arrest, most of which he had spent standing on his feet and without food or water. In Chia's case, as in the case of the defendant in Spano, "slowly mounting fatigue [did] and [was] calculated to play its part."

This Court has also held confessions inadmissible when the defendant was lied to or when his sympathy was falsely aroused. In Spano, for example, a close friend of the defendant was "a fledgling police officer." [Id. at 317.] This friend was used "to play on petitioner's sympathies;" and, at last, "petitioner succumbed to his friend's prevarications and agreed to make a statement." [Id. at 319.] In the case at bar, there was an equally calculated effort to play on defendant Chia's friendship for William Wang. First, the officers told Chia that Wang had died. Then, in a later interrogation, they told him that Wang was alive and needed and wanted Chia's help. They played a carefully selected part of a tape showing Chia that Wang had exonerated him, and then the officers deceitfully entreated Chia to help Wang by telling the whole story. In the very language used by this Court in Spano, Chia's "will was overborne by official pressure, fatigue, and sympathy falsely aroused . . ." [Id. at 323.]

> As this Court stated in Blackburn, supra:
>
> "In cases involving involuntary confessions, this court enforces the strongly felt attitude of our society that important human values are sacrificed where any agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will..." [361 U.S. at 206-207.]

The facts of this case present a compelling example of exactly this kind of sacrifice of human values to secure a conviction at any cost. In the case at bar, state police officers and members of the Federal Bureau of Investigation blithely ignored the rule requiring that a defendant be arraigned within

six hours after arrest. They did so for an obvious, if totally illegitimate, reason. They understood that unless they could wring a confession out of the defendant, they did not have enough evidence on which to maintain him in custody. If the matter came before an independent magistrate, the defendant would be set free, and the police would lose what would probably be their only opportunity to extract a confession. Once set free, the defendant would undoubtedly retain a lawyer and it would be unlikely that the defendant would ever be totally at the mercy of police interrogation as he was on the day of his arrest. The dual circumstances of terror and calculated friendship would be hard to duplicate, even were Chia to be brought in for questioning again. Moreover, once brought before a magistrate, the defendant would learn of the charges brought against him. The police would never again be able to mislead defendant Chia into making a confession on the basis that his cooperation would bring release. He would be fully apprised of his situation, fully cognizant of his constitutional rights, and his arrest and detention would be subject to the independent judgment of a neutral magistrate.

This case should be reversed and the trial court ordered not to admit Chia's out-of-court statements into evidence at the retrial.

III

THE CASE SHOULD BE REVERSED BECAUSE APPROPRIATE JURY INSTRUCTIONS WERE NOT GIVEN, RESULTING IN A JURY RAMRODDED INTO FIRST DEGREE MURDER CONVICTIONS WHICH OTHERWISE MAY NOT HAVE EVENTUATED IF APPROPRIATE OPTIONS HAD BEEN FURNISHED TO THE JURY. THIS WAS IN VIOLATION OF THE PRINCIPLE ESTABLISHED BY THIS COURT IN THE CASE OF MULLANEY vs. WILBUR.

The gravest charges against Defendant Chia were certainly Counts One and Two, namely the murder of the two deceased DEA agents. However, it is abundantly evident that Chia could

only have been convicted of those charges due to the misapplication of certain doctrines which have been severely criticized by our courts, namely the felony murder doctrine, the conspiracy doctrine, and the aiding and abetting theory of liability, all of which in this case were carried beyond the limits of their logic to unjustifiable and unpalatable results.

Moreover, each of these theories of criminal culpability, which have as a possible consequence the conviction and punishment of human beings beyond any credible appraisal of their genuine culpability, was legally assisted by limiting the options of the jury--the representative body of our citizenry which must assess not only guilt, but degrees of guilt--by forcing them to choose first degree murder convictions as the only option to resolve a complicated legal portrait. Ironically, this thesis is in total contravention of the recent pronouncements by this Court in the case of Payne vs. Tennessee, (No. 90-5721. - 6/27/91), which stands for the proposition of individual regard for both the perpetrator and the victim.

In California, after much introspection, the California Supreme Court declared in People v. Dillon, 34 Cal.3d 441, 462-77, 194 Cal.Rptr. 390 (1983), that, even though we recognize no common law crimes, our convoluted and not totally persuasive statutory history justified upholding the felony murder doctrine in certain situations, as abhorrent as it might be. In Dillon, it was stated:

> ". . . our opinions make it clear we hold no brief for the felony-murder rule. We have repeatedly stated that felony murder is a 'highly artificial concept' which 'deserves no extension beyond its required application.' (citations omitted) And we have recognized that the rule is much censured 'because it anachronistically resurrects from a bygone age a 'barbaric' concept that has been discarded in the place of its origin' (citation omitted) and because 'in almost all cases in which it is applied it is unnecessary' and 'it erodes the relation between criminal liability and moral culpability.'" (citation omitted). (at pg. 462-63.)

Although Counts One and Two of the Information allege that Defendant Chia was guilty of murder, that charge encompassed lesser charges of murder and manslaughter as long as there was any evidence worthy of consideration to support them. California Penal Code § 1159; People v. Sedeno, 10 Cal. 3d 703, 112 Cal.Rptr. 1 (1974). This Court has ruled that it is incumbent upon the prosecution to prove beyond a reasonable doubt every fact necessary to constitute the crime charged and that requirement is not limited "to those facts which, if proved, would wholly exonerate the defendant," but encompasses, as well, the option for the jury to find the accused guilty of any lesser degree of homicide warranted by the evidence. Mullaney v. Wilbur, 421 U.S. 684, 702, 95 S.Ct. 1881 (1975).

In the instant case, no lesser included offenses were proferred to the jury whatsoever.

Based upon the evidence, the jury could have concluded that Defendant Chia's major connection with the case was that he acted out of concern for his friend William Wang, thinking that Kow and Sun were dangerous people because of what they proposed to do, and that their affinity for their newfound friend, William Wang, was evanescent, rather than deep-seated, and that either or both of them might "rub him out" with the same abandon Kow contemplated, in dealing with the supposed narcotics traffickers after receiving their substantial monies. Does Chia's concern for 18-year-old Wang's naivete automatically award him first degree murder convictions and meaningful, not theoretical, imprisonment for life because he was unable to either shake Wang's resolve to go through with the ripoff, despite the fact that Chia tried to talk Wang out of it and believed, both on his own accord and because Wang expressed it to him, that Kow was not serious and was merely testing him? (RT 1803, 1826-27, 1844-50, 1863-64).

Can it truly be contended that the only choice the jury should have had was to convict Chia of first degree murder, multiplied by the number of victims because he was unsuccessful in dissuading Wang from his endeavors?

The jury should also have been instructed on the charges of second degree murder and manslaughter.

> In Mullaney v. Wilbur, supra, this Court declared: "This is an intolerable result in a society where, to paraphrase Mr. Justice Harlan, it is far worse to sentence one guilty of manslaughter as a murderer than to sentence a murderer for the lesser crime of manslaughter." (421 U.S. at 702, 95 S.Ct. 1892.)

We think those sentiments suitable to this case and ask that the matter be remanded for a retrial.

IV

THE TRIAL COURT'S SENTENCING WAS EXCESSIVE IN THAT IT VIOLATED THE CRUEL AND UNUSUAL PUNISHMENT PROVISION OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION INASMUCH AS THE PUNISHMENT WAS DISPROPORTIONATE TO THE CULPABILITY OF THE OFFENDER. FURTHERMORE, IT EXPLICITLY RELIED UPON IMPERMISSIBLE FACTORS NOT GERMANE TO SENTENCING ON THE CHARGES FOR WHICH THE DEFENDANT WAS CONVICTED, IN VIOLATION OF THE SAME AMENDMENTS PLUS THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT. FINALLY, THE COURT'S SENTENCE WAS PREDICATED UPON PRECISELY THE TYPE OF VICTIM IMPACT STATEMENT (VIS) WHICH THIS COURT EXPRESSLY REFUSED TO COUNTENANCE IN THE RECENT CASE OF PAYNE v. TENNESSEE.

At the time Defendant Chia was sentenced, the three principals in the case had suffered the following fate: Potential defendants Kow and Sun had been killed by police bullets in retaliation for their murder of two DEA agents and the attempted killing of a third. Therefore, in the absence of any meaningful likelihood of their resurrection, they were not scheduled to appear before the trial court for sentences. Former co-defendant William Wang's trial had been postponed until after Chia's was completed, and the prosecution was actively seeking the death penalty at the point of Chia's sentence on February 28, 1988.

As it happened, in Wang's subsequent trial, the jury refused to find the death penalty the appropriate punishment primarily because it was not within any of the assailants' contemplation that any police officer be robbed, much less killed. (People v. Wang, B049641) To the contrary, at its most heinous, those persons responsible for inflicting death sought to fleece dope traffickers out of undeserved monies. Consequently, when Michael Chia was sentenced, he was the first person in line, through no fault of his own, to bear the brunt of prosecutorial, judicial, and communal outrage at the unfortunate death of two DEA agents.

A. Defendant's Sentence was Cruelly Disproportionate.

A fair rendition of Michael Chia's involvement and the factors relevant to his sentence had to include the following: (1) His only prior contact with the law was a conviction for driving under the influence of alcohol, certainly an offense of minimal gravity compared to the questions at issue; (2) there was no evidence that he had ever even used a gun or dangerous weapon; (3) he was affirmatively excluded, rather than included, in any planning sessions for the ripoff of presumed dope dealers; (4) he was never closer than six miles from the scene of the crimes and not privy to the plans and expectations involved; (5) he was only 20 years of age at the time the crimes were committed; (6) at the time the crimes were planned and carried out, Michael Chia was apart from his mother for the only time in his entire life, and therefore suffered from a lack of parental guidance; (7) his involvement was limited to providing transportation for a recently acquired friend; (8) he had never met or dealt with any of the victims, and the extent of his knowledge was limited to his being told they were big dope dealers; (9) he never received, nor was he supposed to receive, any compensation; (10) he was sentenced for crimes he counselled against and sought to discourage; and (11) co-defendant Wang avoided the death penalty and subsequently, in a case still on appeal, received the same sentence as Michael Chia because the jury concluded that the

objects of his ripoff were dope dealers, not narcotics agents (see companion case presently before the Court of Appeal). (People v. Wang, B049641)

The Court of Appeal's Opinion in Chia (A-17, 18) mistakenly focuses only upon the horrid nature of the shootout between Kow and Wang and the police officers, who--at that time--were thought to be dope dealers. There is no evidence that Petitioner Chia could have or did contemplate or anticipate that the dope dealers would turn out to be police officers; nor was there any contemplation concerning the spontaneous events which occurred in Pasadena--some six miles from Tiny Naylor's parking lot.

> "The Cruel and Unusual Punishments Clause of the Eighth Amendment is directed, in part, "against all punishments which by their excessive length or severity are greatly disproportionate to the offenses charged.'" (Edmund v. Florida, 458 U.S. 788 (1981).)

The defendant's sentence must be based upon his, "personal responsibility and moral guilt." (Ibid. at pg. 801 and at 825 (O'CONNOR, J., dissenting).)

> "[P]roportionality requires a nexus between the punishment imposed and the defendant's blameworthiness." *Tison v. Arizona*, 481 U.S. 137, 149, 107 S.Ct. 1676, 1683-84 (1987).

B. The Trial Court Relied Upon Impermissible Factors in Sentencing Defendant Chia.

Deputy District Attorney Martinez, arguing for the State of California, outlined a number of speculative and unsupported assumptions (RT 2252-54), and after speculating that, "If Mr. Chia in fact had used his good will and said, 'Guys, let's cut this. We're not going to go through with it,' then there would be two alive Drug Enforcement Agents," urged the Court to sentence him to two consecutive life terms with the allegation concerning the principal armed with a deadly weapon, which totals 52 years to life, and to have that sentence run only after he

completed the maximum nine-year sentence for the attempted murder, plus a mid-term sentence for the conspiracy, which called for an additional year. In summary, he explained:

> "Your Honor, we believe that to sentence the defendant concurrently as far as the murders is concerned is to demean at least one of the lives of the Drug Enforcement Agents. And I think that Mr. Chia should serve the punishment because of the fact that when two murders, two human beings are murdered in this robbery, the sentence should reflect that, Your Honor." (RT 2254) (emphasis added)

If such prosecutorial pressure wasn't enough, Assistant United States Attorney Clymer insisted on addressing the Court. He initially pointed out that it was important to vindicate the federal interest involved because the supposed dope dealers accidentally turned out to be federal officers. On behalf of the prosecution, he then put on a third hat and spoke on behalf of the family members of the decedents Seema and Montoya. Although a copy of a letter from the father of Agent George Montoya had been previously transmitted to the Court, Clymer stated that Mr. Montoya wanted the letter read in open court. Clymer did so and the letter is recited in detail in the transcript (RT 2255-57), and we quote therefrom:

> "Dear Sir,
>
> My wife and I wish to convey to you our thoughts concerning the Michael Su Chia trial.
>
> We are the parents of George M. Montoya, the Drug Enforcement Administration Special Agent murdered on February 5, 1988 in the line of duty by drug dealers.
>
> Our son George had dedicated his life to law enforcement. He pursued this as his career to improve our society and to make our country a better place to live. George was a fine son who was loved by his family, co-workers and friends.
>
> The Presidential award given to my wife and I recently by Vice-President Bush and Attorney General Meese, and a letter of condolence from Governor

Deukmajian and numerous other awards attest to the fact that our son George was a fine man, whose faithful dedication to preserving public safety and safeguarding cherished American values will serve a legacy to us all.

It is incumbant upon us, as the survivors of this legacy to ensure that brave men who pay the supreme sacrifice shall not have died in vain. Those who choose to challenge our laws by taking another person's life must pay the penalty to the full extent of the law.

The murder of our son George by suspect William Wang and by the recently convicted Michael Su Chia has been a tragic event in our lives. Our family has suffered inmeasurably and will continue to suffer and grieve for the rest of our lives.

It is for the above-stated reasons that we ask of you that in sentencing Michael Su Chia, you consider our un-told suffering and the loss of our beloved son George.

We respectfully request that you sentence this criminal to the maximum allowable sentence without the possibility of parole.

We feel confident that our system of laws and fair play will prevail in this case, and that you, sir, as an honorable man and Judge, will ensure that justice is done. We thank you for your time and consideration of our thoughts in this matter.

Respectfully yours, John T. Montoya." (Ibid.)

The letter refers to the love naturally felt by his family, co-workers, and friends, and then proceeds to speak of the Presidential Award given to Mr. Montoya and his wife by then Vice President Bush and Attorney General Meese, as well as a letter of condolence from Governor Deukmejian, and numerous other awards complimenting his son George for preserving public safety and safeguarding cherished American values. It urged that Montoya's legacy would die in vain unless Michael Chia paid the maximum penalty under the law, and reiterated

that Agent Montoya's death had been a tragic event in the lives of his family who would continue to suffer immeasurably and grieve for the rest of their lives. Then once more the letter called for Chia to be given the maximum allowable sentence without the possibility of parole, and strongly hinting that, if the trial judge were an honorable man, he would guarantee that result. The trial court followed suit and did precisely what the prosecution and father of the victim virtually commanded him to do.

This Court in the recent case of Payne v. Tennessee, 111 S.Ct. 2597 (1991), overruled aspects of its recent cases of Booth v. Maryland, 482 U.S. 496. 107 S.Ct. 2529 (1987) and South Carolina v. Gathers, 490 U.S. 810, 109 S.Ct. 2207 (1989). However, the various opinions in Payne made clear that it was not overruling those portions of Booth and Gathers wherein a sentencing authority receives information concerning a victim's family members' characterization of and opinions about the crime, the defendant, and the appropriate sentence. (See Payne, supra, 111 S.Ct. at pg. 2611, n. 2; 2614, n. 1.) This case presents all of the evils not ratified in Payne because the victim's prejudicial entreaties were both reiterated and advocated to the sentencing judge and adopted by him.

Interestingly, the Court virtually acknowledged that Chia was a fringe member of the conspiracy and was even excluded from conspiratorial conferences. Nevertheless, the Court used his lack of involvement to conclude, "that he had less pressure on him to go through with it." (RT 2261) Putting aside the fact that Chia didn't trust Wang's confederates and didn't go through with it, the judge's comments stands for the startling proposition that the more involved one becomes, the less culpable he is. The judge suggested that Chia may have dialed "We Tip" and alerted law enforcement to the conspiracy. However, considering how much Chia feared the persons involved, and was a high school dropout, born in Taiwan, and whose first language was Chinese, that would seem to have been an unreasonable expectation and he might even have surmised that the police were not that interested in protecting dope dealers anyhow. At any rate,

the failure to blow the whistle and endanger himself hardly qualified Chia for a future of genuine irreversible life in prison.

Decisively, the trial court then employed an irrational and impermissible standard for meting out maximum sentences. After quoting from tort law to the effect that, "The defendant takes his victims as he finds them," he continued:

> "If you happen to perform some sort of a tortious or criminal act and the person that you kill is the person who is a homeless derelict and no relatives, no friends, society, be it right or wrong, doesn't take as much interest in that as it does when someone who is a leader of society is the victim of that crime.
>
> And I hope I can say what I am going to say without destroying our friendship. We have known each other for 25 or 30 years.
>
> You represent another man who is in prison now who has just recently applied for parole. And if he had killed someone else other than Bobby Kennedy, he might have been paroled by now.
>
> (MR. McKISSACK: "I am sure.")
>
> We certainly have, I think, as a society the right to look upon any criminal situation according to its results as well as the actual criminal nature.
>
> Two very fine dedicated young men were murdered, executed. They didn't have a chance to pull their pieces to fire back.
>
> I have to consider the fact that two people who we hire to protect us from crime were deprived of their lives on that day. That is something that I believe I am justified in taking into consideration as to the fact that Mr. Chia may have gone along hoping that the guns wouldn't be used and hoping no one would be hurt.
>
> Reminds me of another law school example of the dissident that throws the bomb in the King's coach as it goes by in the parade saying a prayer that the Queen will be spared by the blast.
>
> Simply not logical.

> Mr. Chia as a member of this conspiracy anticipated in sharing what its ill-gotten gains were. And it turned out the ill-gotten gains were something that he hadn't anticipated." (RT 2262-63) (emphasis added)

It is clear from the trial court's own words that the sentence of Defendant Chia was totally predicated upon accidental factors he could not possibly have known and which the drug agents involved deliberately concealed from all the parties. Furthermore, it is evident that he did so because of the pressure from the father of the victim doubly advocated in open court at the time of sentence by the prosecution.

It is sometimes difficult to draw a line between permissible and impermissible standards for determining when a sentence is appropriate, but whatever those standards may be, this case falls lopsidedly in the realm of the illegitimate. (cf. Niemotko v. Maryland, 340 U.S. 268, 285 (1951) (Frankfurter J. concurring) Consequently, this case, even if it were not reversed on other issues, should be remanded for sentencing under the appropriate standards.

CONCLUSION

For the aforegoing reasons a hearing should be granted and the case reversed.

Dated: December 2, 1991.

Respectfully submitted,

LUKE McKISSACK
Attorney for Petitioner,
MICHAEL SU TE-CHIA

APPENDIX A

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL

STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,	)	8043360
	)	(Super.Ct.
Plaintiff and Respondent.	)	No. A576188)
	)	
v.	)	FILED
	)	
MICHAEL SU TE-CHIA,	)	MAY 30, 1991
	)	
Defendant and Appellant.	)	Robert N. Wilson, Clerk
	)	

APPEAL from a judgment of the Superior Court of Los Angeles County, Gilbert C. Alston, Judge. Affirmed.

Luke McKissack, for Defendant and Appellant.

John K. Van De Kamp and Daniel E. Lungren, Attorneys General, Richard B. Iglehart, Chief Assistant Attorney General, Wendelin Pollack, Supervising Deputy Attorney General, Alison Braun and David Glassman, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Michael Se Te-Chia of the murders of two Drug Enforcement Administration agents (Paul Seema and

George Montoya), the attempted murder of a third DEA agent (Jose Martinez), second degree robbery of the DEA agents and conspiracy to commit the robbery, and found true numerous serious felony and firearm use allegations and a special allegation based on the destruction of United States government property valued in excess of $25,000. Chia appeals, claiming pretrial, trial and sentencing errors require reversal. We disagree and affirm the judgment.

FACTS

In July 1987, the DEA's Los Angeles office investigated Frank Kow, a major dealer in heroin imported from Southeast Asia for distribution in the United States. Agent Paul Seema (one of the victims) posed as a heroin broker, contacted Kow and offered to bring Kow a buyer with money to purchase heroin. Two small purchases were made from Kow in October and November, 1987, and a fine two pound delivery was set for February 1988. The plan was to get Kow to show the heroin to Seema before the final exchange and then to arrest Kow.

On the evening of February 4, 1988, Agent Nadine Takeshta was watching Kow's apartment from a car across the street. At 10:10 p.m., a black Mitsubishi parked in front of her car. Two Asian men got out and opened the hatchback. One of the men (William Wang) took a semi-automatic pistol from the trunk, stuck it in his belt and then walked into Kow's apartment complex. Three minutes later, the other man (Chia) walked up

the complex stairs, paced back and forth on the landing in front of the apartments, then stood at the top of the stairs for several minutes. Wang came out, met Chia at the top of the stairs, and both walked back to the Mitsubishi. Chia and Wang were seen together later that night at the "8000 Club."

On February 5, Kow called Seema and told Seema to meet him at 11:00 a.m. at the Tiny Naylor's restaurant in Monterey Park, explaining that the heroin had been delivered to a house in Pasadena. Agent Raymond Berndt, who was watching Kow's apartment on the morning of February 5, saw the Mitsubishi at 10:30 a.m. and again at 11:30 a.m. and, at both times, saw a man resembling Chia walk down Kow's walkway, get into the car and drive away.

A little while later, other agents spotted the Mitsubishi driving towards Tiny Naylor's and, still later, in Tiny Naylor's parking lot. Chia left the Mitsubishi and talked to two men who had arrived in a red Nissan compact, Wang and Michael Chen. After a few minutes, Wang and Chen got back into the Nissan and Chia walked past Kow, who was standing at the entrance to Tiny Naylor's, and into the restaurant. Ten minutes later, Chia came out of Tiny Naylor's, got back into the Mitsubishi, drove to the restaurant entrance, had a brief conversation with Kow, and drove into an alley and out of view. Shortly thereafter, he reentered the parking lot.

Seema and Jose Martinez (another victim) drove into the parking lot, got out of their Volvo, and went in to Tiny Naylor's to meet Kow. Agent George Montoya (the third victim) remained in the Volvo. Wang and Chen circled the parking lot in the Nissan and then parked in a different space. Wang got out, used a pay phone, hung up and waited there a few minutes. Chia left the lot in the Mitsubishi.

Fifteen minutes after entering Tiny Naylor's, Seema, Martinez and Kow came out and walked to the Volvo. The Nissan (Wang and Chen) drove through the lot. The Mitsubishi (Chia) reappeared in the lot and parked. Meanwhile, Martinez took a bag containing $80,000 from the Volvo's trunk, handed it to Montoya (who was still in the Volvo), got behind the wheel and drove away with Seema, Kow, and Montoya. Other agents followed and saw the Nissan some distance behind the Volvo.

At Kow's direction, the Volvo suddenly pulled over, Kow got out, took several steps away from the car, turned and pointed an automatic weapon at the agents, who responded by raising their hands. Martinez spotted the Nissan parked 100 feet behind the Volvo and saw Wang get out of the Nissan and point a gun at Seema. Montoya handed over the money. Seema asked Wang and Kow not to kill them. Wang said, "Shut the fuck up or I'll kill you." Then Wang and Kow looked at each other and started shooting. Seema and Montoya were killed, and Martinez

was shot in the legs while charging the assailants, but survived. Kow and Wang got into the Nissan with Chen and sped away.

Hearing gunfire, nearby agents moved in and chased the Nissan. Kow fired shots at the agents from the Nissan, the Nissan went out of control, and agents fired into the Nissan until the gunfire from within stopped. Kow and Chen were killed. Wang was arrested and survived surgery for his gunshot wounds. He waived his constitutional rights and gave four statements to law enforcement officials outlining his involvement. The bag of money was found in the Nissan.

Shortly thereafter, Chia was spotted in the area in the Mitsubishi and was arrested. He waived his constitutional rights and gave four statements to law enforcement officials. Detectives found a plastic bag in the hatch area of the Mitsubishi containing three ski masks, three sets of handcuffs, an empty .45-caliber magazine and a box of 43 rounds of .45-caliber ammunition, and vehicle registration and an insurance card in Chia's name. The owner of a gun shop in Monterey Park identified Chia as the companion of another man who had purchased .45-caliber ammunition for a handgun from him three or four weeks prior to the incident.

Charges were originally filed against Chia and Wang in federal court, but were dismissed and refiled in state court. Chia was charged with the murders of Seema and Montoya, the attempted murder of Martinez, second degree robbery, and

conspiracy to commit robbery, and with special allegations that the offenses were serious felonies within the meaning of Penal Code section 1192.7, subdivisions (c)(1) and (19),[1] that the principal was armed with a firearm, and that Chia caused the destruction of United States Government property worth more than $25,000. The charges against Wang were severed and tired separately.

The jury rejected Chia's defense (that his involvement was solely to protect his friend Wang) band found him guilty as charged (with the exception of one alleged overt act on the conspiracy charge). Chia was sentenced to 25 years to life for each murder plus additional time for the other counts and allegations. The sentences on the murders and attempted murder were imposed to run consecutively, and the others were stayed. This appeal followed.

DISCUSSION

I.

Wang gave four statements to law enforcement officials, which we summarize in the margin.[2] Wang refused to testify at

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[1] All section references are to the Penal Code.

[2] In the first statement, given before Wang's surgery, Wang said that on February 1, he, Kow and Chen decided to steal $60,000 and that it was he, Kow and Chen who were involved in the shooting on February 5.

The second statement was taken at about 3:30 p.m. on February 5. Wang waived his constitutional rights, and told of

Chia's trial and Chia's pretrial motion for permission to use all four of Wang's out of court statements at trial was denied. Relying on People v. Spriggs (1964) 60 Cal.2d 868, Chia

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(Footnote continued from previous page.)
a week-old plan to "rip off" drug dealers. He recounted details of the shooting of the men in the Volvo -- Kow shot Montoya and grabbed the money bag and he (Wang) shot Seema and Martinez -- and details of the attempt by Chen, Kow and himself to escape in the red Nissan, and their eventual captured. Interviewing agents discovered upon their return to the station that the tape recording of this confession skipped and they went back to the hospital at about 8:00 p.m. and obtained a third confession which was substantially similar to the second.

The fourth and most detailed statement was obtained on February 7 after another waiver by Wang of his constitutional rights. He stated that Kow asked him a week before the incident to help him with a "rip off" and the plan included the murder of the individuals to be ripped off. Wang said that he told his friend Chia about the plan, and that Chia warned him against involvement and of the possibility that Chen and Kow could turn on him and rip him off. Chia nevertheless drove Wang in Chia's Mitsubishi to Kow's on the night of February 4, so that Wang could deliver a gun and ammunition and to learn the final plans. Chia and Wang later went to dinner at the 8000 Club and stayed the night at a friend's house. The next morning, Chia dropped Wang at Kow's apartment. Chen drove Kow and Wang to Tiny Naylor's. While acting as a lookout in the restaurant parking lot, Wang saw Chia in the Mitsubishi driving around the lot -- Chia was watching out for him and again told Wang not to do it. Wang told Chia to go home, but he stayed to watch out for Wang. Wang then recounted details of the "rip off," escape and capture.

contends Wang's statements were admissible as declarations against Wang's penal interest.[3] We disagree.

In People v. Spriggs, supra, 60 Cal.2d at 874, the Supreme Court explained that hearsay evidence is admissible when and if it is trustworthy and that because a declaration against penal interest is unlikely to be false, it is generally trustworthy and therefore admissible. Since Spriggs, our courts have refined the rule and it is now clear that a declaration against interest is admissible only when the statement is (1) specifically disserving to the interest of the declarant (collateral assertions are not admissible) (People v. Garcia (1981) 115 Cal.App.3d 85, 105; People v. Leach (1975) 15 Cal.3d 419, 441, fn. 17) and (2) "clothed with sufficient indicia of reliability." (People v. Shipe, supra, 49 Cal.App.3d at pp. 352-353; see also People v. Garcia, supra, 115 Cal.App.3d at p. 105.) Declarations against penal

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[3] As relevant, Evidence Code section 1230 provides that "(e)vidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made,... so far subjected him to the risk of... criminal liability...that a reasonable man in his position would not have made the statement unless he believed it to be true." Wang's availability is not an issue in this case. Wang's trial was severed from Chia's and Chia was tried first. Wang planned to assert his Fifth Amendment privilege against self-incrimination and he was therefore "unavailable" within the meaning of section 1230. (Evid. Code, § 240; People v. Shipe (1975) 49 Cal.App.3d 343, 352.)

interest are only presumptively reliable. (In re Jessie L. (1982) 131 Cal.App.3d 202, 211.)

Of course, Chia was not interested in the admission of the portions of Wang's statements which specifically disserve Wang's interests (such as Wang's confession of his involvement in the "rip off" and shooting of two DEA agents). Rather, Chris wanted to use Wang's collateral assertions that Chia was not involved in the actual shooting and that Chia had tried to talk Wang out of participating in the enterprise at all. For this reason, Wang's statements were properly excluded. (See People v. Garcia, supra, 115 Cal.App.3d at 105.)

Moreover, there were insufficient indicia of reliability. Wang's statements were made post-arrest, and that fact alone makes them inherently suspect. (People v. Campa (1984) 36 Cal.3d 870, 882.) As the trial court aptly noted, it is not uncommon for someone caught (quite literally) with a smoking gun, as Wang was in this case, to make statements to protect an arguably less culpable confederate. And there was no evidence at all to corroborate Wang's statements about Chia's purported uninvolvement.

Finally, as the trial court also noted, Wang's statements were not in any event particularly exculpatory. They show clearly that Chia knew of the "rip off" plan, including the murders, and that he followed Wang around to help and watch

out for Wang. There was neither error nor prejudice in the exclusion of the statements.

II.

Prior to his arraignment, Chia gave four statements to law enforcement officials. Chia claims that his pretrial motion to suppress those statements for lack of voluntariness should have been granted under federal law and that the statements should have been excluded because they were coerced and obtained during a period of illegal detention. We disagree.

Chia was arrested at about 12:45 p.m. on Friday, February 5, by local police officers, transported to the city jail in Monterey Park, and booked. Five hours later, he was transported to the city jail in Pasadena and booked again. At 7:40 p.m., he waived his constitutional rights and gave a statement to local officers. At 3:20 a.m. on February 6, after he was reminded of his rights, he gave a second statement. State and federal agents both participated in Chia's third interrogation at 2:00 p.m. on Monday, February 8, and in his fourth interview on Tuesday morning, February 9.[4]

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[4] In his first statement, Chia explained his activities that day as getting up, going to a county agency, getting something to eat and taking friends to court in Pasadena to pay tickets. When told he had been seen at Tiny Naylor's, Chia explained that he had called his friends from there.

In his second statement, Chia said Wang told him about a plan to "rip off" some drug dealers, that he had taken Wang to a dealer's apartment the night of February 4 to deliver a .45 and

Meanwhile, an INS agent interviewed Chia late on February 8 and, while verifying whether Chia had correctly identified himself as a legal permanent resident, placed a hold on Chia to ensure the INS would be notified prior to Chia's release so the INS could assume custody. On February 9, the INS determined that Chia was in violation of the federal statute which requires an alien to carry his "green card" and the INS took Chia into custody at 4:00 p.m. that day. After a 7:00 p.m. interview, the INS decided to charge Chia but since no magistrate was

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(Footnote continued from previous page.)
bullets, and that he told Wang that he was concerned about Wang's safety and would follow him on February 5 and pick him up if there was trouble. On February 5, Chia drove Wang to the dealer's apartment, got something to eat, waited at the restaurant parking lot but never saw Wang, and left to take his friends to court. Chia said the ski masks found in his trunk were for "playing jokes" on friends and identified the magazine clip in his trunk as Wang's.

In his third interview, Chia told again of taking Wang to deliver the gun on the evening of February 4. He said that he and Wang made the plan for Chia to be Wang's bodyguard during the robbery on the ride home from the 8000 Club that same night. He cautioned Wang against the entire enterprise, and told agents that he hadn't believed it would happen. He again described his activities on February 5, and said Wang had given him the ski masks.

In Chia's fourth statement, he said that he saw Wang and Chen coming out of the restaurant when he went there at 11:00 a.m. on February 5, that Wang told him he was not to be seen, that he went into the restaurant to make a phone call, and then drove to his friend's house.

available, an affidavit was not presented to the United States Attorney until the following morning.

On February 10, the INS learned that the United States Attorney had decided to arraign Chia in federal court for the murders of the DEA agents. The United States Attorney filed the required affidavit, and Chia was arraigned on February 11. On March 15, federal murder charges were dismissed and refiled in state court.[5]

These facts do not support Chia's assertion that federal law ought to be applied and his statements suppressed because he was not arraigned within six hours after his arrest as required by the Federal Rules of Criminal Procedure. (Fed. Rules Crim. Proc., rule 5; 18 U.S.C. § 3501, subd. (c).) State officials were involved at every stage -- arrest, holding, investigation, interrogation and prosecution -- and neither the limited INS involvement nor the mere fact that the charges were originally filed in federal court are dispositive.

The cases relied on by Chia do not support a different conclusion. United States v. Fouche (1985) 776 F.2d 1398, for example, involved the arrest by local officers of a bank robber,

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[5] The switch to state court was to permit the prosecutor to seek the death penalty which would not have been available in federal court and there is no evidence to support Chia's assertion on this appeal that prosecutors were forum-shopping to ensure the use of Chia's statements or to avoid federal arraignment procedures.

interrogation by federal officers and a federal prosecution. The court, not surprisingly, applied federal law to the issue of timeliness of the arraignment and admissibility of confessions. (See also Anderson v. United States (1943) 318 U.S. 350.) Similarly, in United States v. Broadhead (1969) 413 F.2d 1351, local police acted at the request of federal officers in setting up a roadblock, arresting and holding a bank robber in the local jail. Federal officers, not state officers, conducted a lineup and all further investigation. In a federal prosecution, the court applied federal law to determine the admissibility of the lineup identification. These cases are factually inapposite.

Accordingly, we look to state law to determine whether Chia's arraignment was timely. Penal Code section 825 requires that a defendant be brought before a magistrate and informed of the charges against him "without unnecessary delay, and, in any event, within two days after his or her arrest, excluding Sundays and holidays." Our inquiry, therefore, is whether state officials (1) acted "without unnecessary delay" and (2) within the two-day outer limit.

Where, as here, "several arrested persons are jointly suspected of involvement in the same crime, a reason-able delay in arraignment in order to evaluate the case against each of them would appear to qualify as necessary delay within the meaning of the Penal Code." (People v. King (1969) 270 Cal.App.2d 817, 822; Youngblood v. Gates (1988) 200 Cal.App.3d 1302,

1320.) The time taken in this case was necessary to evaluate Chia's involvement and by no means was there an unnecessary delay.

Chia was arrested on Friday, February 5, at about 12:45 p.m. With the intervening weekend, he should have been arraigned by Tuesday, February 9. (Youngblood v. Gates, supra, 200 Cal.App. 3d at pp. 1310-1313.) In fact, he was not arraigned until Thursday, February 11. On Tuesday afternoon, however, within the time for arraignment, Chia was released from state custody, to the custody of the INS, and the issue regarding the timeliness of the arraignment is therefore a red herring. (O'Neal v. Superior Court (1986) 185 Cal.App.3d 1086, 1990 [once the hold was in place, the defendant was no longer detained "prior to arraignment" and section 825 ceased to operate].) In any event, all of Chia's statements were given before expiration of the two-day period and the subsequent delay was in no way prejudicial. (People v. Deutschman (1972) 23 Cal.App.3d 559, 566.)

We find nothing in the record to support Chia's related contention that his statements resulted from actual coercion. No promises or inducements were made to Chia and it is undisputed that he was repeatedly advised and reminded of his Miranda rights at each interview and repeated waivers were given. The trial court apparently gave Chia's testimony -- that he waived his rights because he feared that, although he was not a minor, he

would not qualify for appointed counsel because his parents, who were living in Taiwan, were wealthy -- the weight to which it was entitled.[6]

III.

Chia complains that the trial court should have sua sponte instructed the jury on the lesser included offenses of grand larceny, second degree murder, manslaughter and involuntary manslaughter. We disagree.

A trial court is obligated to instruct sua sponte on lesser included offenses only when the evidence raises a question whether all of the elements of the offenses actually charged were present but not where the evidence establishes that, if the defendant was guilty at all, he was guilty of the higher offense charged.[7] (People v. Wickersham (1982) 32 Cal.3d 307, 323-324; People v. Ellers (1980) 108 Cal.App.3d 943, 954.)

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[6] We summarily reject Chia's suggestion that we should infer coercion because he was isolated from friends and relatives (there is no suggestion that he asked to see anyone), because he was physically or mentally fatigued (an argument unsupported by the record) or because he was somehow unduly susceptible to coercion.

[7] In fact, "[t]rial courts are duty-bound to avoid instructions which are not justified by the facts of the case, since they have a natural tendency to over-burden and confuse the jury." (People v. Singleton (1987) 196 Cal.App.3d 488, 492.)

Chia was charged with second degree robbery, "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (§ 211.) Grand larceny, on the other hand, is merely a "theft committed... [w]hen the property is taken from the person of another," without any requirement of force or fear. (§ 487.) Based on the undisputed display of guns by Kow and Wang, Chia was guilty of robbery or not guilty of any theft related offense. There was no error in this regard.

Chia was charged with two counts of first degree murder and one count of attempted murder because two DEA agents were killed and a third was almost killed in the perpetration of a robbery. By statutory definition (§ 189), this is first degree murder and could not be second degree murder. The absence of any evidence of killings in the heat of passion or as the result of a sudden quarrel defeats the suggestion that this could have been voluntary manslaughter, and the fact the robbery was a felony means that the killings could not have been involuntary manslaughter. (People v. Rhodes (1989) 215 Cal.App.3d 470, 475.)

There was no instructional error.

IV.

Chia claims that his sentence to two consecutive life terms is "cruelly disproportionate to his conduct and back-

ground" because he was only 20 years old at the time the crimes were committed. We disagree.

Chia's mistake is in focusing solely on his background and ignoring the heinous nature of these crimes. Our analysis is not so one-sided but instead examines two factors, the totality of the circumstances surrounding the commission of the offenses, including motive, the way the crimes were committed, the extent of Chia's involvement, and the consequences of his acts and, secondarily, the nature of the offender and his individual culpability, including his age, prior criminality, personal characteristics, and state of mind. (People v. Dillon (1983) 34 Cal.3d 441, 479.)

Here, the crimes were part of a sophisticated plot involving not only robbery and conspiracy but planned murders. The motive was financial gain, the crimes were carefully planned and carried out in a cold and methodical fashion, with each participant, including Chia, making his special contribution as gun and ammunition procurer, contact man, negotiator, wheel-man, lookout, and triggerman. The crimes were cold-blooded and cold-hearted, as evidenced by the manner in which the agents were shot after they had turned over their money, had their hands in the air and pleaded for their lives. Two law enforcement officers were killed and a third was seriously injured.

Chia's relative youth (20 years) and his minimal conviction record (one conviction for drunk driving) simply pale in comparison to the vicious, cold-blooded nature of his conduct, and it is this conduct, not his sentence, that "shocks the conscience." Where, as here, there are separate acts of violence, there is no presumption in favor of concurrent sentences and, in our view, this case cried out for consecutive sentences. (People v. Reeder (1984) 152 Cal.App.3d 900, 923.)

We summarily reject Chia's further contentions that the trial court impermissibly considered the effect of the victims' deaths on their families (People v. Sewell (1989) 210 Cal.App. 3d 1447, 1449-1450), and the fact that the victims were law enforcement officers. (Ibid.; People v. Dillon, supra, 34 Cal.3d at p. 479.) The record reflects the trial court's consideration of numerous appropriate factors at the time sentence was pronounced.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

VOGEL, J.

We concur:

DEVICH, Acting P.J.

APPENDIX B

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
ROBERT N. WILSON, CLERK

DIVISION: 1 DATE: 06/19/91

LUKE McKISSACK
P. O. BOX 1688
LOS ANGELES, CA 90093

RE: PEOPLE OF THE STATE OF CALIFORNIA
VS.
CHIA, MICHAEL SU
2 CRIMINAL 8043360
LOS ANGELES NO. A576188

THE COURT:

PETITION FOR REHEARING DENIED.

APPENDIX C

OFFICE OF THE CLERK
SUPREME COURT
STATE OF CALIFORNIA

September 4, 1991

LUKE McKISSACK
P. O. BOX 1688
LOS ANGELES, CA 90093

RE: PEOPLE OF THE STATE OF CALIFORNIA
VS.
CHIA, MICHAEL SU
2 CRIMINAL B043360
LOS ANGELES NO. A576188

THE COURT:

PETITION FOR REVIEW DENIED.

Lucas, C.J.

APPENDIX D

CONSTITUTIONAL PROVISIONS

Sixth Amendment to the United States Constitution

In all civil prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel or his defense. (Relevant portion underscored.)

Eighth Amendment to the United States Constitution

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual penalties inflicted. (Relevant portion underscored.)

Fourteenth Amendment to the United States Constitution

Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Relevant portion underscored.)